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# Legal and Ethical Issues in Digital Policing

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# 11 EFFICACY OF THE DUTCH GENERAL MUNICIPAL BYLAW IN COMBATING ONLINE TROUBLEMAKERS<sup>\*</sup>

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## Abstract

*This chapter examines the effectiveness of the Dutch General Municipal Bylaw (Algemene Plaatselijke Verordening, APV) in addressing public disturbances incited online, using administrative law. It focuses on recent developments in the cities of Almelo and Utrecht. The increasing role of social media in promoting public disorder, as witnessed in incidents such as the 2021 curfew riots and COVID-19-related protests, has raised concerns. Almelo's efforts to introduce explicit regulations targeting online behavior pose both legal and practical challenges, particularly in how municipalities can govern virtual spaces under local law. Through case studies, including Utrecht's initiative to impose periodic penalties for inflammatory online statements, this chapter explores the potential and limitations of using the APV to tackle online disruptions. A comparison with Belgium's approach, where Brussels has explicitly extended police regulations to virtual spaces, highlights key differences. The analysis addresses important legal challenges, particularly the potential conflict with freedom of expression under Dutch constitutional law, which limits municipalities' ability to restrict fundamental rights. The chapter concludes by evaluating whether local bylaws can effectively regulate online-incited disturbances and offers specific suggestions for amending the APV to create a legally robust framework for governing online behavior.*

## 11.1 INTRODUCTION

'Almelo now wants to be able to act against online public disorder.' This headline of the Almelo municipality's press release on 1 December 2022 (Wennekes, 2022) reflects the growing concern over online calls for public disorder. The municipality has faced such issues during the farmers' protests and curfew riots at the height of the COVID-19 pandemic. Recognising that social media and other online platforms can

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<sup>\*</sup> This chapter has previously been published in Dutch in *Computerrecht* (see Bantema & Twickler, 2023). Permission has been granted to publish in English with a reference.

instigate public disturbances,<sup>1</sup> the mayor aims to take preventive measures. Consequently, Almelo has advocated for the use of administrative powers online and has included an explicit provision in the General Municipal Bylaw (Algemene Plaatselijke Verordening, APV) to criminalise online behaviour that may disturb public peace. This chapter explores the efficacy of the Dutch General Municipal Bylaw in addressing online-incited disturbances through administrative law.

This local perspective on a global issue is unique. Literature shows that authoritarian national regimes such as China, Cuba, Iran, Syria, Turkey and Vietnam take extensive measures to regulate social media by blocking platforms and censoring information online (Tuncay, 2018). Censorship practices vary widely across different countries (Ververis et al., 2019). This chapter focuses on the approach of local governments based on local regulations, with an emphasis on social media users rather than platform regulation. The central question in this chapter is: *To what extent can the municipality use the General Municipal Bylaw to act against online-incited disturbances, and, if possible, how can such an article be designed textually?*

This chapter consists of seven sections. Section 11.2 focuses on the administrative law background in the Netherlands, and section 11.3 outlines the context in which online-incited disturbances occur (with international examples). Section 11.4 provides the background to the studies and methods on which this chapter is based. The results are presented in section 11.5, which discusses a case in Utrecht where the General Municipal Bylaw was deployed. Section 11.6 examines the Belgian method, in which all articles from the General Police Regulations (similar to the Dutch General Municipal Bylaw) are declared applicable to the virtual domain. Section 11.7 translates the insights from Belgium to the Dutch situation and proposes textual suggestions for a new General Municipal Bylaw article in the Netherlands. The chapter concludes in section 11.8 with a brief discussion and conclusion.

### 11.2 LEGAL BACKGROUND

As of 12 June 2024, the Netherlands comprises 342 municipal authorities. These authorities perform many tasks, including registering residents, building roads and footpaths, providing social services, and maintaining law and order. Mayors are generally responsible for maintaining law and order, crisis management and representing their councils at the national and international levels. In emergencies, the mayor leads the crisis team. A mayor is a non-elected administrative authority appointed by the monarch and the Minister of the Interior, so-called the Crown (*de Kroon*), for a period of six years. The rules concerning the governing bodies of municipalities (council, executive and

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1 Here and hereafter, ‘municipality’ refers to mayor or college of mayors and councillors.

mayor) are defined in the Municipalities Act (Gemeentewet). In contrast to the General Municipal Bylaw, the Municipalities Act is established by the national government. The mayor chairs both the executive board and the legislative council of the municipality and is responsible for safety and public order. On behalf of the municipality, the mayor has many powers to intervene in public disturbances and contribute to the prevention of disturbances.

The General Municipal Bylaw lays down the municipal regulations on public order and safety. Each Dutch municipality has its own General Bylaw, which applies to everyone in the municipality. The rules in the General Bylaw stipulate whether residents require a permit for certain activities (Rijksoverheid, 2024). The General Bylaw describes various rules that apply in the municipality and includes rules on, for example, events, use of fireworks, nuisance and rowdiness. Examples of administrative powers to regulate public order and safety include a periodic penalty (a sum imposed to provide an incentive for undertakings to comply with a decision in a timely manner and to prevent future offences), an area ban (the creator of a nuisance is banned from a specific area for a set period) and an administrative power to take control of houses used for criminal activities such as drug trafficking. At the local level, the police act under the authority of the mayor in matters of public order (administrative law), and where criminal enforcement is concerned, the police act under the authority of the district attorney.

### 11.3 SOCIETAL AND ADMINISTRATIVE BACKGROUND

#### 11.3.1 *Examples of online-incited disturbances*

The example of the municipality of Almelo is not an isolated one. In recent years, Dutch municipalities have regularly faced public order disturbances organised and driven through social media. One of the most widely known examples was the party in Haren that was organised online (Project X) in 2012 (Tweede Kamer der Staten-Generaal, 2013). Haren is a village of 20,000 residents near the town of Groningen (in the northern part of the Netherlands). In September 2012, a 15-year-old girl accidentally posted an open Facebook invitation to her 16th birthday party. Facebook users broadcast the message, and thousands of youths heeded the call. The mayor tried to stop them by spreading a social media message stating in effect that there was no party. However, between 3,000 and 5,000 people assembled, resulting in severe disturbances, including the destruction of shopfronts and robberies. Project X (Haren) was a wake-up call for local authorities regarding the role of social media and their relationship to public order and safety.

In recent years, the relationship between online behaviour and municipal public order has become more apparent. The best-known recent example concerns the curfew riots of January 2021, which took place in many municipalities in the Netherlands and

caused significant damage. These riots were not unique to the Netherlands. Measures were taken worldwide to prevent the spread of COVID-19, and people in other countries also disagreed with their governments' measures, such as school closures, compulsory working from home and restrictions on large gatherings. This culminated in demonstrations and sometimes violence (Wood et al., 2022). Other examples include football hooligans, organised mass fights and social unrest around fake news. One might also consider unrest related to paedophiles in residential areas, unrest related to the potential establishment of asylum centres and the polarisation of population groups on local Facebook pages or X (formerly Twitter).

Currently, several farmer protests and actions are being organised through social media. In the academic literature, most examples involve protests and the use of social media for organising demonstrations and (violent) protests (Briggs, 2012; Treadwell et al., 2013). The legal discussion is different regarding demonstrations and protests, but the line between reasonable demonstration and riots is sometimes thin, as seen in practice and in the British studies mentioned. One can also observe a clear influence from social media influencers on public order and safety. In May 2024, a TikTok influencer named Oracle caused chaos in a park in Zurich by dropping 24,000 Swiss francs (about 25,000 euros) in banknotes from a drone over a crowd. The action resulted in injuries to a young bystander, and the police are now looking for witnesses (De Jager, 2024). In another case, during the Champions League final (football), three pitch invaders stormed the Wembley turf after being promised £300,000 by a controversial Russian influencer (Elson, 2023).

### 11.3.2 *Research and administrative developments*

In 2018, there was still reluctance among mayors to take an active role in preventing online-incited disturbances (Bantema et al., 2018). More recent research, however, even before the COVID-19 pandemic, has shown that increasing numbers of mayors see an active role for themselves. For example, 71% of mayors feel responsible for preventing online-incited disturbances (Bantema et al., 2018). Mayors feel they have a limited repertoire for action, however, as they have no explicit powers to intervene preventively online (Bantema, Westers & Munneke, 2020). At the same time, they can be held administratively responsible for the public order consequences of a disruption (Article 172 of the Municipalities Act). Calls for powers to intervene preventively online seem to be increasing in recent years (NRC, 2023).

In one study (Bantema, Westers & Munneke, 2020), half of the mayors questioned indicated that they would consider imposing a periodic penalty on online comments expected to lead to disorder. The legal analysis in the same study showed that this would not be possible, however, because, among other things, a legal regulation is not being violated (Bantema, Westers & Munneke, 2020). Bantema et al. (2018) also show

that fundamental rights, jurisdictional problems, legislation focusing on the physical (local) domain and an unclear relationship between online comments and public order are among the reasons the mayors cannot apply their powers online.

Because municipalities had relatively little experience with public order disturbances instigated online, the discussion of administrative law powers in the online domain was seen by many as a scholarly or even legal-philosophical discussion. This was the case until 2021, when several municipalities experienced public order disruptions instigated online. Some municipalities seized on these events to experiment with their powers by imposing periodic penalty payments to prevent a repeat of these disturbances. One example is the periodic penalty in the municipality of Utrecht in November 2021, on which the District Court of the central part of the Netherlands (Rechtbank Midden-Nederland) has now ruled (Gemeente Utrecht, 2021; Rechtbank Midden-Nederland, 2023).

The research underlying this chapter started in 2020, before municipalities experimented with applying administrative law powers online (Bantema, de Vries & Twickler, 2022). It is worth noting that, unlike in many other countries, mayors in the Netherlands have many powers to maintain public order. In the study, commissioned by the District Security Consultation IJsselland, various administrative law options for dealing with online-incited disturbances were discussed. This chapter is limited to the possibilities offered by the General Bylaw as a basis for administrative law enforcement online. The question is to what extent it is possible to set out rules with prohibitions and/or restrictions on online conduct at the local community level and what these rules might look like. Scientific knowledge about this topic is still limited, yet its relevance and social urgency are high. The central question is: *To what extent can the municipality use the General Municipal Bylaw to act against online-incited disturbances, and, if possible, how can such an article be designed textually?*

In the Netherlands, the police are under the authority of mayors (for the administrative approach) and the district attorney (for the criminal approach). This chapter deals with the administrative approach, where the police have an executive task by order of the mayor to maintain public order and safety.

#### 11.4 METHODS

The data used in this chapter were collected on behalf of the IJsselland region in the eastern part of the Netherlands, which wanted more insight into the possibilities offered by the General Municipal Bylaw. The study consists of a legal analysis/source study and an empirical part including interviews and focus groups. For the practical exploration (phase 1), five interviews were held with municipalities in the IJsselland region. In these interviews, attention was paid to the municipalities' views on administrative

law enforcement and the possibilities and shortcomings of the General Municipal Bylaw. Additionally, three interviews were held with Dutch municipalities outside the region that have experimented with an administrative law approach to online-incited disturbances. Another in-depth interview was held to gain more insight into the design and considerations of the Brussels ‘virtual’ Bylaw article.

Finally, for the review of phases 1 and 2, an expert meeting was held with three legal experts, and a focus group was held with municipal lawyers (predominantly from the region) to present the legal routes (phase 2) and reflect on their implementation/enforcement (phase 3). The legal source research was based on legislation, case law, annotations and literature. The data collection took place between December 2021 and April 2022.

To paint the most reliable and objective picture possible, legal experts were consulted, and the results of these sessions were incorporated into the report. The practical and legal source research and interviews illuminate the issue from multiple angles, which benefits the independence and validity of the study.<sup>2</sup>

#### **11.5 DESCRIPTION OF THE ADMINISTRATIVE GENERAL BYLAW EXPERIMENT IN THE CITY OF UTRECHT**

##### *11.5.1 Case study description*

The case in the city of Utrecht, described here as an example, was analysed using literature research. The mayor of the municipality of Utrecht imposed a periodic penalty on a resident of the municipality of Zeist. A pamphlet had been distributed with a picture of Canal Street (Kanaalstraat) and the text ‘Utrecht in revolt! Bring your mates and fireworks’. The person was tracked down and detained, and the periodic penalty was imposed to prevent a repeat of the online sedition. The person had to refrain from posting messages online (on social media) that could lead to disorder. Prohibited messages included calls aimed at disturbing public order in the municipality where the effect of the resident’s digital expression occurred (i.e. in the other municipality). If this individual did not comply with the periodic penalty, he forfeited a fine of €2,500 (Gemeente Utrecht, 2021). This forfeiture did not take place, and the mayor of Utrecht has since withdrawn the measure (RTV Utrecht, 2022).

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2 For more details see Bantema et al. (2022).

### 11.5.2 *Basis of the measure*

The administrative measure was based on Article 125(3) of the Municipalities Act and Article 5:32(1) of the General Administrative Law Act. From these articles, the mayor derives the power to impose a periodic penalty. In this case, a periodic penalty was imposed on the person concerned, because his provocative behaviour caused disorder (i.e. calling for riots), which is punishable under Article 2.2, paragraph 1(g) of the General Municipal Bylaw 2010 of the municipal authorities. The relevant provision reads as follows:

Without prejudice to the provisions of Articles 424, 426a and 431 of the Penal Code, it is forbidden in or on a public place or in a building accessible to the public, in any way: (a) to disturb order; (b) to behave in a nuisance manner; (c) to harass persons; (d) to fight; (e) to take part in a gathering; (f) to intrude unnecessarily; or (g) to incite disorder by provocative behaviour.

The Utrecht municipality further states that it has no independent power to monitor the online messages of the person concerned. This is instead achieved through the powers of the investigative authorities. According to the municipality, inflammatory messages are traced by the investigative authorities. These authorities can use all powers available to them under the Code of Criminal Procedure. The municipality assumes that, in this way, any future inflammatory statements by the person concerned will come to light and the periodic penalty will be enforced. In this sense, it works no differently from a regular area ban, according to the Utrecht municipality. A person on whom a restraining order is imposed may not enter the designated area. An investigating officer must establish that the person was in the area in question to establish that the area ban has been violated (Gemeente Utrecht, 2021).

### 11.5.3 *Case law and literature*

#### 11.5.3.1 *Limitations on Article 7 by central government legislation*

Direct criticisms of the Utrecht case in the literature include the contention that the provocative behaviour consisted of inciting riots via a computer, and therefore the freedom of expression of Article 7 of the Dutch Constitution is at stake. It has been argued that by applying the mayor's administrative sanction, freedom of expression is unlawfully restricted by taking the General Municipal Bylaw article as the basis for sanctioning the conduct. According to the restriction system of the Dutch Constitution, only the national government is allowed to restrict fundamental rights.

This General Municipal Bylaw article focuses on the concept of challenging behaviour. The question is whether challenging behaviour is a form of expression as



referred to in Article 7 of the Constitution. A Supreme Court judgment of 28 May 2020 (ECLI:NL:HR:2002:AE1494) ruled on this issue. The case concerned the gathering ban in the General Municipal Bylaw of the municipality of Tilburg, in which challenging behaviour was (also) punishable as stated. The case involved participating in riots at a football match. The defendant's counsel invoked Article 12(3) of the International Covenant on Civil and Political Rights (ICCPR) and Article 2(3) of the Fourth Protocol to the European Convention on Human Rights (ECHR), both of which address the fundamental right to freedom of movement. Both articles state that restrictions on this right are not permitted except those which are, among others, 'provided by law and are necessary to protect national security and public order'. Rulings based on these articles have clarified that legal restrictions imposed by municipalities may limit the fundamental rights referred to in these treaty articles, provided they are established by law and necessary to protect public order. As a treaty is of a higher legal order, it supersedes the Dutch Constitution and its limitations on local laws regarding fundamental rights.

The rulings state that neither article requires that the restriction of the fundamental right must be included in a national law, as the Constitution does in certain articles on fundamental rights. It has been argued that when restrictions are contained in an order based on a prohibition provision of the General Municipal Bylaw, the court can assume that the 'provided by law' requirement, as expressed in the above-mentioned international law articles, has been met (Kortman et al., 2016, pp. 401-402), even though it concerns local law. In the above-mentioned Supreme Court ruling, the General Municipal Bylaw article of the municipality of Tilburg was binding. It was also argued in this case that the General Municipal Bylaw article of the municipality of Tilburg was contrary to the aforementioned international law provisions, because it was drafted too broadly and too vaguely. In this judgment, the Supreme Court considered that a certain vagueness in the description of the offence was necessary, because disturbance of public order has a multitude of manifestations (Hoge Raad, 2002).

In summary, prohibiting 'challenging behaviour' is not necessarily an impermissible curtailment of freedom of speech that would only be permitted by a law of the central government, but there is not much case law on this point.

#### *11.5.3.2 Specificity of Utrecht's General Municipal Bylaw article*

The question here is whether Article 2.2 of the General Municipal Bylaw of the municipality of Utrecht and Article 125, paragraph 3 of the Municipalities Act, in conjunction with Article 5:32, paragraph 1 of the General Administrative Law Act, are sufficiently specific to restrict a fundamental right. In his article, Teunissen (2009) refers to case law in which the administrative judge frequently allows government action, whereas, according to Kortmann, the government action is in violation of, in particular, the principles of legality and speciality, by which government action requires a specific legal basis (Bantema, Twickler & De Vries, 2022).

These conflicting opinions show that there is division and ambiguity among legal experts about how specific the regulations from the General Municipal Bylaw should be to potentially restrict fundamental rights in certain circumstances. The Central Netherlands District Court did not address this issue in its ruling, however, because it stated that the action of the municipality of Utrecht was without a doubt in violation of Article 7 of the Constitution (Rechtbank Midden-Nederland, 2023).

#### *11.5.3.3 Extent of disorder*

There is also the question of the extent of the disorder (brought about by the challenging behaviour). That there was disorder is evident. The weekends of 20 and 27 November 2021 were fraught with disorderliness throughout the country because of the aforementioned pandemic restrictions. However, the periodic penalty in the municipality of Utrecht is based not on the right to freedom of movement, as in the case of the municipality of Tilburg (and as formulated in Article 12 ICCPR and Article 2 of the Fourth Protocol to the ECHR), but on freedom of expression (i.e. Article 7 of the Dutch Constitution). According to the limitation system in the Dutch Constitution, restrictions are only allowed by law of the national government. The Penal Code, established by the central government, contains such a provision in Article 131, which prohibits incitement (to disturb public order). The General Municipal Bylaw is established by a local government, not the national government, and in principle cannot restrict freedom of expression. This argument recurs often: municipalities cannot restrict fundamental rights through the General Municipal Bylaw, because only the national government is allowed to do so and only in certain circumstances.

#### *11.5.3.4 Conflicting views of the municipality and legal experts*

Brouwer and Schilder are of the opinion that in the Utrecht case, the mayor's decision cannot be upheld because of the restrictive system of the Dutch Constitution and because the periodic penalty implies censorship and is therefore contrary to the freedom of expression (Brouwer & Schilder, 2022). Monitoring the order to refrain from posting content online that could incite disruption to public order requires a substantive test of the expressions. According to the municipality, there is no question of censorship or interference with the expression, because the penalty is only forfeited at the moment the person concerned makes further calls aimed at disturbing public order in the municipality of Utrecht. The person concerned may therefore express any opinion, but within the limits of the law. The spreading of inflammatory messages is seen as contrary to the law, and the periodic penalty is therefore justifiable, according to the municipality (Gemeente Utrecht, 2021). The investigating authorities are charged with supervising compliance with the order by the person concerned, and they can make use of the powers in the Code of Criminal Procedure. The municipality, it says, has no independent power of its own to supervise online offences (Gemeente Utrecht, 2021). The court confirmed this reasoning in its ruling (Rechtbank Midden-Nederland, 2023, considerations 8-11).

It is interesting how the municipality views the application of the subsidiarity principle. According to the municipality, imposing a periodic penalty to prevent further inflammatory statements on social media is the only (administrative) option the mayor can use besides criminal law. It is emphasised by the municipality that the periodic penalty can have a quick effect and thus protect public order (Gemeente Utrecht, 2021). Boumanjal, the lawyer of the person from Zeist upon whom a periodic penalty was imposed by the mayor of Utrecht, wonders whether the surveillance monitors the IP address of the person concerned, and whether they check which websites the person visits and which platforms he uses. If this is the case, it seems to him that this violates the right to privacy under Article 10 of the Dutch Constitution. All these powers may only be applied by investigative agencies under strict conditions (Boumanjal, 2021). The court does not address this argument.

#### *11.5.3.5 Reflection from the focus group and expert meeting*

In the underlying research, outcomes from the literature and case histories were presented to experts and legally experienced practitioners from municipalities. In the discussion from the expert meeting, M.A.D.W. de Jong, Associate Professor at Radboud University Nijmegen, felt that the articles in the General Bylaw on which the decision was based were insufficiently specific. The difference in enforcement was also highlighted: physical area bans can be monitored physically, affecting residents' freedom of movement. In contrast, an online ban necessitates monitoring residents' expressions, impacting their privacy as well. Thus, two additional fundamental rights are at stake, in her opinion.

The focus group noted that the sanction used, the periodic penalty, is referred to in the press as a 'digital area ban'. It said that this is now known to be a well-established term, but it should be questioned whether this terminology is correct, because the term refers to an injunction that does not apply to the entire internet, but only to special online messages that may incite provocative behaviour that could lead to disorder. The focus group also assumed that fundamental rights may not be restricted by a local law and that this case involved freedom of expression in accordance with Article 7 of the Dutch Constitution.

The focus group also highlighted the complexity of enforcement in these cases. Among other issues, they raised the question of who can be considered an excessive offender in the case of incitement to riot. According to the lawyers present, a distinction may need to be made between the person who calls for a riot and the actual rioters in the physical domain. Finally, the focus group suggested that an emergency ordinance and emergency order could be useful for prevention and referred to useful non-legal interventions, such as sending a letter, posting messages on social media and engaging in conversation on social media with people who call for riots. Also mentioned in this context was the digital neighbourhood agent, who is often in close contact with the neighbourhood and can serve as a mediator.

### 11.5.3.6 *Reflection of the Court*

A court ruling in the Utrecht case followed on 3 February 2023. The judge believes that a digital platform such as Telegram cannot be construed as a public place. While a group chat (accessible to everyone) on Telegram is public, it is not a place, within the meaning of the General Municipal Bylaw, that is within the mayor's purview. According to the judge, the mayor also misinterprets Article 2:2, paragraph 1(g) of the General Municipal Bylaw by saying that only the disorderly conduct must take place in a public place; the conduct that gives rise to it may take place in a non-physical place. The General Municipal Bylaw provision is clearly intended for the situation where the challenging behaviour that gives rise to disorder is displayed in the public place. Should the reasoning be correct, this General Municipal Bylaw article would lead to an impermissible restriction of the freedom of expression contained in Article 7, paragraph 3 of the Dutch Constitution. A General Municipal Bylaw may not restrict the content of statements. It is also stated in the court ruling that such a restriction of freedom of expression can only take place through a national law according to the restriction system of the Dutch Constitution. In summary, the mayor is not authorised to impose a periodic penalty (Rechtbank Midden-Nederland, 2023).

Based on the Utrecht case study, the General Municipal Bylaw does not appear to be an appropriate instrument to deal with online content that may disrupt public order. This is not only due to local regulations, which are focused on physical public spaces rather than virtual public spaces, but also primarily because fundamental rights may not be restricted through a local law in the Netherlands. The perspective of the judge and experts in the focus group align. The following section explores how this issue is addressed in Belgium.

## 11.6 DESCRIPTION OF BRUSSELS GENERAL POLICE REGULATIONS (BELGIUM)

### 11.6.1 *Description of the Belgian case study*

This topic is also relevant in Belgium and has been widely discussed there. In contrast to the Dutch situation, there is an explicit reference to virtual public space in the Common General Police Regulations of Belgium (in the 19 Brussels municipalities). The Common General Police Regulations for all 19 Brussels municipalities examined in this section apply to the Brussels-Capital Region. This Region has a parliament that exercises legislative power. The executive power lies with the Brussels-Capital Government. The region consists of 19 municipalities, all of which have broad autonomy in the exercise of their powers. The Brussels-Capital Government exercises control over these municipalities (be.brussels, n.d.).

From 1 September 2020, a Common General Police Regulation came into force for all 19 Brussels municipalities. These regulations can be compared to the Dutch General Municipal Bylaw. Section 1, Article 4(5) states the following:

For the purposes of these regulations, the term ‘publicly accessible space’ includes not only actual spaces but also virtual spaces that are accessible to the public, such as accounts on social media, forums, and other digital platforms that are not limited to a small number of people who share common interests (politie.be, 2024).

Article 5 of the regulations states that in the described spaces (including virtual ones), people are expected to comply with the orders of the police or authorised officials, among other things with a view to maintaining public safety and tranquillity. If a legal topic is regulated at the federal level in Belgium, it may no longer be regulated in the lower regulations. What is not regulated on the federal level may be regulated by the *communes*, the municipalities. In the area of virtual public order, nothing is regulated at the federal or state levels, so the *communes* can and may implement their own regulations (uvcvw, n.d.).

Two respondents from Belgium were interviewed, but only limited information was provided. This information revealed, among other things, that the Common General Police Regulations are enforced by a specially appointed supervisor and, in some cases, by a mediator for each area of the municipality. If there is a violation, it is dealt with under criminal law; a fine usually follows, but a mediation process also takes place. In this context, it is important to act quickly and effectively. The interview revealed that the problems surrounding disruptions of public order from the internet are solved pragmatically as much as possible with the help of mediation.<sup>3</sup> People do not expect conflicts with Article 6 ECHR in this respect. ‘You have to try something anyway’, as the interviewees said. More practical experience could not be demonstrated by the experience of the interviewees. It remains to be seen how professional practice regarding these regulations develops.

#### 11.6.2 *Reflection on the Belgian case study*

The expert meeting sought opinions on the Belgian approach to handling online incitement, where interviews indicated that communication and mediation are effective tools. The combination of criminal law and mediation, as applied in the Brussels

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3 In mediation, a neutral third party, the mediator, is brought in to mediate a conflict and reach an outcome that is acceptable to both parties.

municipalities, seems juridically sound and effective, according to De Jong. Bantema wonders how far this remains effective in the long term and whether there should not be an ultimate sanction in the event of a repeat offence. According to De Jong, talking to a mayor is important, and criminal law acts as an incentive in this regard. In terms of administrative law, the mayor can always act in the physical environment by, for example, working with an emergency ordinance or an emergency order. It is worth noting that in Belgium, unlike in the Netherlands, mayors have hardly any powers of their own to maintain public order and safety.

In the focus group with municipal lawyers, the combination of criminal fines and mediation was mentioned as a creative option. A caveat should be noted here, however, regarding mass protests with much emotion, such as farmers' protests. In such cases, the size of the protest makes mediation difficult, and sponsors for fines and periodic penalty payments can often be found in big protest groups, so the effect of a sanction is reduced, if present at all. Regarding the monitoring of sentiments and expressions, those present indicated that there are limits to monitoring by municipalities but that in the tripartite consultations the police can be asked to start monitoring within the framework of criminal law, if there is reason to do so. The role of social media platforms was also questioned. One wonders whether these platforms can be addressed by the municipality.

As mentioned above, the choice was made in Belgium to make all articles of the General Municipal Bylaw also applicable to virtual spaces (in addition to physical public spaces). Additional research shows that no lively legal practice has emerged so far, and that local rules regarding 'virtual spaces' are primarily used as a means of facilitating conversation (mediation). However, the method of formulation may provide inspiration for the Dutch situation. This will be discussed further in the next section.

### 11.7 ARTICLES OF THE GENERAL MUNICIPAL BYLAW THAT EXPLICITLY FOCUS (MORE) ON THE ONLINE DOMAIN

#### 11.7.1 *Expanding the definition of public space*

One of the ways to make the General Bylaw usable for tackling online disorder is to extend its scope to the virtual domain. In the case of Utrecht, an existing article in the General Bylaw was used that, like many laws and regulations in administrative law, focuses on the physical domain. The extension presented here is based on and inspired by the text from the General Police Regulations of Brussels. Such an extension could also be implemented in the Dutch General Municipal Bylaw and could then read as follows:

In addition to physical spaces, this regulation also applies to virtual spaces accessible to the public, such as accounts on social media, forums and other

digital platforms that are not limited to a small number of people with common interests.

In this way, it would become possible to apply provisions of the General Bylaw that in principle focus on physical public space to virtual space. Instead of declaring the entire General Bylaw applicable to virtual space, the definition of the term ‘public place’ could be expanded:

A place accessible to the public, including the road as referred to under c and the virtual spaces accessible to the public, such as accounts on social media, forums and other digital platforms that are not limited to a small number of people sharing *common interests*.

If the prohibition is breached or a breach is likely to occur, it can be enforced administratively with a (preventive) remedial sanction, such as a periodic penalty or (with reference to a criminal provision) a fine. Feedback on this proposal was not received from the focus group and expert meeting, because it was created afterwards. In its ruling in the Utrecht case, the court considered that ‘public place’ in this municipality’s General Municipal Bylaw article (Article 2.2) meant a physical place.

In the explanation of the Utrecht ruling, the court further determined that digital platforms, such as group chats on Telegram, can be classified as a public place. However, this does not mean that it is the type of public space the Municipal Bylaw focuses on, as these public spaces are only physical. The court furthermore states that Telegram, although a public space because it is accessible to everyone, is not within the powers of the mayor. This last statement is interesting because it might refer to the jurisdiction of the mayor, which is limited by the municipality boundaries. The public space of Telegram is worldwide.

#### 11.7.2 *Adaptation of the General Municipal Bylaw in Almelo*

Besides Utrecht, where an existing Municipal Bylaw article was used to crack down on online troublemakers, another municipality in the Netherlands went a step further. In the municipality of Almelo, a town in the eastern part of the Netherlands, a General Municipal Bylaw article was recently introduced as groundwork to deal with online-incited disturbances. In the case of violation, a periodic penalty can be imposed. Like the proposal presented above, the article is an elaboration of the General Municipal Bylaw article referred to in Utrecht. In addition to Article 2:1a (which has not been amended), a new article has been added, namely Article 2:1b (Gemeente Almelo, 2022). This article reads as follows:

- 1 It is forbidden to make, share and/or maintain expressions through digital means, including through the Internet, virtual spaces and social media, which could lead to a physical disturbance of public order within the territory of the municipality of Almelo, or to the creation of a serious fear thereof.
- 2 Without prejudice to the provisions of Section 54a of the Penal Code, operators of websites, domain name holders and social media platforms are prohibited from making statements, as referred to in the first paragraph, via their communication service: share or further disseminate or have disseminated (a), uphold (b), or keep online and accessible or visible (c).
- 3 Administrators of websites, domain name holders, hosting providers and social media platforms are obliged to block, remove and keep removed, by order of the mayor, expressions as referred to in the first paragraph, whether or not through their own notice-and-take-down procedures.

### 11.7.3 *Reflection on current events*

A few experts reflected on the General Municipal Bylaw of Almelo in the magazine *Binnenlands Bestuur*.<sup>4</sup> This is not part of the research, but it gives a picture of how people think about current affairs (Knapen, 2022). De Jong is critical and indicates that mayors should not take measures aimed at curbing freedom of expression. She also argues for national rules as opposed to rules that differ in each municipality. For her, freedom of expression weighs heavily as one of the core values of the rule of law. She also indicates that the article is a form of censorship as it bans expressions on the internet in advance. This is not allowed under Article 7 of the Dutch Constitution (freedom of expression). For example, the local triangle consists of the mayor, the police and the district attorney. They gather regularly to discuss the public order situation.<sup>5</sup> According to De Jong, there is only one route: criminal law. Incitement is punishable under Article 131 of the Penal Code, and anyone who engages in incitement can be prosecuted. She adds that enforcing a penalty based on the General Municipal Bylaw article carries risks, as it involves interfering with freedom of expression and privacy, because digital devices must be checked for utterances. De Jong also refers to the fact that most laws are written for the physical domain, and they cannot simply be applied in the online world. In summary, De Jong argues that the digital area ban that Almelo is proposing is not possible, because it is a fundamental break with the Dutch vision of freedom of demonstration and the protection of the freedom of expression. She therefore advocates cooperation within the

4 Binnenlands Bestuur (Domestic Governance) is the only journalistically independent platform in the Netherlands for government officials and administrators, bringing news, background and opinion on governance and policy.

5 Article 7 of the Constitution deals with freedom of speech and the prohibition of censorship.



local triangle to tackle the problem. It seems that the Central Netherlands court followed this line of reasoning in its ruling of 3 February 2023.

Bantema argues that there are four criteria for developing workable legislation (Knappen, 2022). First, it must be determined whether a regulation is desirable or necessary and whether other non-legal solutions are possible. The second criterion is whether it will stand up in court (legal tenability). The third is the question of organisational feasibility. Finally, the fourth criterion is whether the remedy is effective. Bantema argues that when all four criteria are met, useful law has been developed. Bantema also argues that online incitement cannot be tackled through a General Municipal Bylaw, because physical freedom of movement (and area bans) is an entirely different area from regulations that address freedom of expression.

In response to the Almelo article, Bantema refers to online messages that are sometimes vague. The call will often not be ‘let’s go riot’ but, for example, ‘we’re going for coffee’. It then becomes a play on words that is difficult to act against. Finally, Bantema sees a problem in that the government cannot constantly monitor citizens online: ‘There is no explicit administrative law power for a municipality to systematically monitor someone.’ In addition, Bantema also refers to the discussion about the limits of administrative law powers. For instance, mayors have no cross-border powers: a young man from Venlo cannot be tackled in Groningen because he incited riots there online. Moreover, the causal link between online behaviour and the effect on public order must be clear, and that relationship is often indirect.

Mariëtta Buitenhuis sees more possibilities than De Jong. In special circumstances, she does see options for a legal basis.<sup>6</sup> She indicates that, to a certain extent, certain restrictions on the fundamental right of freedom of expression appear to be permitted in case law, where rulings have stated that a restriction of a fundamental right may only be an indirect consequence of the internet ban. Buitenhuis is also curious about how the judge will handle cases like the Utrecht case. That does not mean that Buitenhuis does not anticipate any potential problems. She mainly sees problems in enforcement and enforceability. Buitenhuis wonders how one can check whether someone posts a call to disrupt public order on social media. These posts are often done anonymously or with an alias. The mayor does not have access to IP addresses and cannot take Tweets offline. If they are not enforceable and enforced, there is no point in including such General Municipal Bylaw articles, according to Buitenhuis. Buitenhuis sees possibilities with the law in a formal sense. She points out that fundamental rights can be restricted – under certain conditions – by laws made by the central government. According to Buitenhuis, mayors cannot order hosting companies to take messages offline (see Articles 2

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6 Mariëtta Buitenhuis is a lawyer with AKD, a law firm in the Netherlands. She specialises in public order enforcement issues. The possibilities of taking enforcement action against online disorder have her particular attention. See for articles on this topic Buitenhuis (2022).

and 3). There are no local powers or procedures for that. Incidentally, Buitenhuis does see favourable possibilities in relation to the light powers of injunction (Article 172, paragraph 3 of the Municipalities Act), but due to the limits of space in this study, these possibilities are not discussed here (for more information see Buitenhuis, 2022).

## 11.8 DISCUSSION AND CONCLUSION

### 11.8.1 *Discussion*

Beyond all the criticism of the General Municipal Bylaw as the legal basis for dealing with online-incited disturbances, drawing attention to some nuances is in order. For instance, since COVID-19, the relationship between online behaviour and public order has become increasingly clear (see also Wood et al., 2022). This clarity should make the substantiation of measures easier and more plausible. The issue of different jurisdictions also calls for nuance. For example, one may question to what extent jurisdiction is an issue when it is assumed that there is a clear impact on public order in a specific municipality. Furthermore, the question is to what extent inciting riots or deliberately disturbing public order is protected by freedom of speech. As stated, most examples in the literature concern protest and show a clear role of social media in the organisation of the events (Briggs, 2012; Treadwell et al., 2013). More case law will eventually clarify the legal possibilities of the General Municipal Bylaw as groundwork for tackling online disorder. The District Court of the Central Netherlands ruled on this in the first instance and, for the time being, overturned the underlying decision for an online area ban.

It is also advisable not to lose sight of issues such as necessity (i.e. whether there are alternatives), feasibility, enforcement and effectiveness. When the relevant requirements are not met, a measure will achieve little beyond a strong normative signal. Current events in 2024 show that an increasing number of municipalities want to experiment with online administrative law enforcement, partly to address issues related to drill rap,<sup>7</sup> which involves youths creating drill rap videos that incite offline violence between gangs (Omroep West, 2023). It is to be hoped that in 2024, (1) administrative law experiments will yield results in case law and thus provide more information about their legal tenability and feasibility; (2) social and political discussions will be held about the desirability and necessity of administrative law enforcement online; and (3) more research will be conducted into the effectiveness of different types of measures and policy in dealing with disturbances instigated online.

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7 Drill rap is a subgenre of hip-hop known for its raw lyrics that often discuss crime, street life and gang conflicts.

There is increasing talk in the media of an ‘online area ban’. Researchers have tried to provide a definition of this concept:

The imposition of a restriction on a person or organisation in making online statements for a certain period due to a serious fear of a disturbance of public order, which may be evidenced by serious objections, because previous statements have (partly) led to this, or in the case of such statements leading to fear of public order the first time. (Vuik & Bantema, 2021)

The case in Utrecht fits with this definition, as statements were made that led to public order disturbances before. The new General Municipal Bylaw in the municipality of Almelo goes even further by imposing a fine in the first instance when there is a serious fear of a disturbance. In any case, a digital area ban remains distinct from a physical area ban, and the term is misleading, since citizens can continue to use the internet and social media, except for specific statements that can result in fines. When politicians launch new plans, they would be wise to avoid using the term ‘online area bans’, because using the term would play into the hands of the biggest critics of these plans, even though the measures they propose are often less invasive of privacy.

#### 11.8.2 Conclusion

This study started by questioning to what extent municipalities can act against online-incited public order disturbances via the General Municipal Bylaw and how such Bylaw articles can or should be formulated. The first conclusion, based on legal possibilities, is a pessimistic one regarding the chance of success of the General Municipal Bylaw as an instrument. The legal possibilities and limitations were discussed because of the case in the municipality of Utrecht and because of the amendment of the General Municipal Bylaw in Almelo. Attention was also paid to the way in which an attempt was made in Belgium to declare the Common General Police Regulations (the equivalent of the Dutch General Municipal Bylaw) applicable to the virtual public domain.

In general, the restrictive system of the Dutch Constitution poses challenges for municipalities in establishing regulations within the General Municipal Bylaw. The root of an online disturbance often intersects with issues of opinion, thereby implicating freedom of expression. The article revealed that freedom of expression should not be restricted through the General Municipal Bylaw. It also emerged from the literature and discussions with experts that it is assumed that the General Municipal Bylaw is meant for the physical domain and that, as a result, there are currently no administrative law enforcement options online. The question is whether, in cases where municipalities do enforce administrative law (the Municipalities Law, a law established by the national government) for online statements that have the effect of disrupting public order,

the courts will take a different view. If the judge disapproves, there may be a task for the national government to create a possibility for municipalities to still regulate the virtual domain. In any case, the court annulled the decision containing the chosen construction of the municipality of Utrecht, in which an existing General Municipal Bylaw article was applied.

Not only did legal bottlenecks emerge, but issues regarding the enforcement and implementation of such General Municipal Bylaw rules were also highlighted. These include the complexity of determining the offender, demonstrating the relationship between online activities and public order disturbances, disturbances fuelled online from other municipalities (or abroad) and legislation that is formulated and intended for the physical domain. This study discussed two General Municipal Bylaw proposals in which the regulations are explicitly and clearly focused on online action and the potential consequences for public order in a specific municipality. These proposals do not directly solve the problems outlined, however, because even when they are clearly targeted at online behaviour or content, freedom of expression still comes into play and should not be restricted via a General Municipal Bylaw. In addition, there are also concerns about the enforcement and enforceability of such rules should the legal basis be upheld by the administrative court.

In addition to the suitability of the General Municipal Bylaw as an instrument, specific textual possibilities and textual proposals that have been tried and tested in practice were also investigated. For example, both the municipality of Almelo and several Brussels municipalities have explicitly addressed the effects of online behaviour on public order. It was previously determined that the General Municipal Bylaw is not an appropriate instrument, but the textual proposals examined could potentially be used to amend a law on the national level, such as the Municipalities Act. In general, the broader a text proposal is (see, for example, Almelo), the more room it offers for restricting fundamental rights. In addition, the risk with a specific article (where fundamental rights are less likely to be affected and it is clearer what the government expects) is that it has limited applicability to cover a range of online phenomena that can affect public order. One of the key principles that follows from the analyses is that municipalities should not restrict communication in advance. Any bill will therefore have to focus exclusively on preventing a repeat offence rather than on preventing the offence and/or message in advance.

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Digital developments have a significant impact on crime and therefore on law enforcement practices. One of the profound issues is that the police have to deal with challenges in balancing new technological possibilities for law enforcement agencies in the investigation of crimes, and the implications that these developments have for fundamental human rights. There are no clear-cut solutions or answers. Step by step, the police have to find answers to several legal and ethical issues that go together with the digitalisation of society. The aim of the PDS-network and of this volume is to address and discuss critical policing issues. This volume is the result of the 2023 Policing in the Digital Society Network conference at the Police Academy in Apeldoorn, the Netherlands. This volume provides the police, as well as institutions for academic and police education, with insights into the latest developments and legal and ethical issues in modern policing.



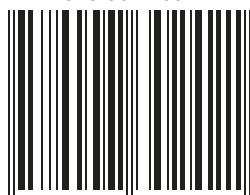
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